

THE LAW, DEATH, AND MEDICAL ETHICS

Ms B and Diane Pretty: a commentary

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In two recent court cases, Ms B, a paralysed competent adult, was allowed to end her life; Mrs Pretty, another paralysed competent adult, was not. In legal terms, the essential difference between the two cases is that Ms B was seeking the withdrawal of treatment, whereas Mrs Pretty was asking for assistance in ending her life. I argue that while this distinction may accurately state the law that governs these situations, it does not rest on a defensible moral basis. Both the women should have been allowed to choose the manner in which they would die.

In March 2002 the family division of the High Court in London decided a case brought against a National Health Service Hospital trust by a 43 year old patient known only as Ms B. Ms B was paralysed from the neck down, and on a ventilator. She had repeatedly asked for the ventilator to be turned off, although she knew that without the ventilator she would die. Her condition was incurable, however, and she found it made her life not worth living. The hospital refused to turn off the ventilator. The court held that Ms B was competent, and entitled to end her life by refusing further life support. After the decision, she again asked for the ventilator to be turned off. It was, and she died.

The following month the European Court of Human Rights rejected an application from Mrs Diane Pretty, a 43 year old woman who had claimed that an earlier UK court decision against allowing her husband to assist her in ending her own life was contrary to articles 2, 3, 8, 9, and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Mrs Pretty is, at the time of writing, still alive, but she may well not be by the time this article is published. She is suffering from motor neurone disease, a neurodegenerative disease that progressively weakens muscles to the point at which death occurs from an inability to breathe or to swallow. When the European court heard her case, she was essentially paralysed from the neck downwards, was virtually unable to speak, and was being fed by a tube. She wished to die in a humane and dignified manner, rather than in the distressing manner that would be caused by the disease, or from the slow starvation that would result from the withdrawal of the tube. The European court's ruling means that, in law, she does not have that right.

To a lay observer, there seems to be an inconsistency in the way in which these two cases were decided. Ms B, a paralysed competent adult, was allowed to end her life; Mrs Pretty, another

paralysed competent adult, was not. How can this make sense?

To a lawyer, on the other hand, there is no inconsistency. Indeed, both decisions were entirely predictable. It is a well established principle of law that a competent adult has the right to refuse medical treatment. As the court said in Ms B's case, summarising a ruling by the Court of Appeal in an earlier case:

If mental capacity is not in issue and the patient, having been given the relevant information and offered the available options, chooses to refuse the treatment, that decision has to be respected by the doctors. Considerations that the best interests of the patient would indicate that the decision should be to consent to treatment are irrelevant.¹

On the other hand, courts in Canada, the United States, the United Kingdom and elsewhere have held that laws prohibiting assisted suicide prevent anyone assisting a person to die, even if that person is paralysed and unable to bring about their own death.

So putting these two principles together, we get a right to refuse medical treatment, even if that means you will die, but no right for someone else to assist you to die, if the mere withdrawal of medical treatment will not bring about that end, or will not bring it about in an acceptable manner.

Technically, the lawyers are correct. The two cases can be reconciled. They are not inconsistent, in the strict meaning of that term. But in a deeper ethical sense, the lay observers are right. We have arrived at the absurd situation where a paralysed woman can choose to die when she wants if her condition means that she needs some form of medical treatment to survive; whereas another paralysed woman cannot choose to die when or in the manner she wants, because there is no medical treatment keeping her alive in such a way that, if it were withdrawn, she would have a humane and dignified death. What we have done is build legal doctrines based on two separate rules of law, and thereby we have reached a situation that makes no ethical sense at all. We need to move beyond a rule-based ethic, and consider the consequences of the situations with which we are faced.

It is right that a competent paralysed woman like Ms B should be allowed to decide whether or not to continue living in the condition she will be in for the rest of her life. It is also right that a competent, paralysed, terminally ill woman like Mrs Pretty should be allowed to decide whether to continue living, given that her life will only deteriorate until death comes. Is there a morally

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significant difference in the fact that in one case a doctor needs to turn off a ventilator, and in the other case Mr Pretty needs to give his wife a drug to end her life? I cannot see what that difference would be. The courts that decided against Mrs Pretty referred to the idea that if assisted suicide were legal, vulnerable people might be put under pressure to end their lives, perhaps from the fear of being a burden on relatives. If that is true, however, then surely it is equally true that if it is legal to end one's life by requesting the withdrawal of a ventilator, then vulnerable people might be put under pressure to request that a ventilator be withdrawn. The same can be said for arguments about the difficulty of preventing abuse, should assisted suicide be legalised. Why should we not worry about the difficulty of preventing abuse if patients are allowed to bring about their own deaths by refusing medical treatment?

In these and other relevant arguments, the two cases are essentially similar, and these similarities are, from an ethical perspective, more significant than the differences between them. In any case, the state has no interest in forcing a paralysed woman to continue living against her will. Both Ms B and Mrs Pretty should be allowed to make their own decisions about when they wish to die, and to act on them.

REFERENCE

- 1 **Ms B and An NHS Hospital Trust** [2002] EWHC 429 (Fam), par 100, summarising *St George's Healthcare NHS Trust v S* [1999] Fam 26 at page 63.



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